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**Micropower USA Corp. and Professionals at  
Micropower New York State United Teachers  
and Greg Sandler and Amina Chowdhury.**  
Cases 02–CA–130858, 02–CA–132236, 02–CA–  
132592, and 02–CA–132830

March 31, 2015

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by Professionals at Micropower New York State United Teachers (the Union), Greg Sandler, and Amina Chowdhury, the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on November 25, 2014, against Micropower USA Corp. (the Respondent), alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 8, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 13, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was received by October 9, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and email dated December 23, 2014, advised the Respondent that unless an answer was received by December 29, 2014, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the con-

solidated complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a New York corporation, had an office and place of business located at 137 West 25th Street, Fifth Floor, New York, New York (Manhattan campus), and was an educational institution providing courses in vocational trades and English as a second language.

The Respondent, in conducting its operations described above, annually derived gross revenue in excess of \$1 million from performance of services.

The Respondent, in conducting its operations described above, annually purchased and received goods, supplies, and materials valued in excess of \$5000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At material times, the following individuals held positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Sam Hiranandaney	President
Lalit Chabria	Vice President
Margaret Orem	Chief Executive Officer
Dr. Michael McTague	Director, Manhattan campus
Valentina Portnov	Chair, ESL Department, Manhattan campus

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time teachers employed by the Respondent at its facility located at 137 West 25<sup>th</sup> Street, New York, New York, excluding all other employees, including office clerical employees, and guards and supervisors as defined in the Act.

On April 14, 2014, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since April 14, 2014, based on Section 9(a), the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred after the Union's certification.

1. About June 16, 2014, the Respondent, by McTague, in an office on the Manhattan campus, instructed employees not to discuss their terms and conditions of employment with union representatives or with one another.

2. About June 9, 2014, certain employees of the Respondent represented by the Union and employed at the Manhattan campus ceased work concertedly and engaged in a strike.

3. About June 10, 2014, in a letter sent by email to Hiranandaney, Chabria, and McTague, among others, the following employees, who engaged in the strike described above, made an unconditional offer to return to their former positions of employment:

Alex Albaret	Ntumba Mukendi
Valmike Apuzen	Felicity Nduku
Florentino Capili	Gwendolyn Nisbett
Imelda Lapid	Nevdoyle Santana

4. From about June 10 until about June 21, 2014, the Respondent failed and refused to reinstate Alex Albaret to his former position of employment.

5. From about June 10 until about June 23, 2014, the Respondent failed and refused to reinstate Gwendolyn Nisbett to her former position of employment.

6. From about June 10 until about October 17, 2014,<sup>1</sup> the Respondent failed and refused to reinstate Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, and Nevdoyle Santana to their former positions of employment.

7. About June 15, 2014, the Respondent, by Portnov placed a call to the New York City Police Department requesting that Amina Chowdhury be removed from the Manhattan campus.

8. About June 24, 2014, the Respondent discharged Chowdhury. The Respondent engaged in the above conduct because Chowdhury assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. About June 21, 2014, the Respondent, by Portnov, placed a call to the New York City Police Department

requesting that employee Greg Sandler be removed from the Manhattan campus.

10. About June 24, 2014, the Respondent discharged Sandler. The Respondent engaged in the above conduct because Sandler assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

11. About June 24, 2014, the Union, by email and facsimile, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about June 24, 2014, the Respondent has failed and refused to bargain with the Union.

#### CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1, 7, and 9 above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.<sup>2</sup>

2. By the conduct described in paragraphs 4–6, 8, and 10 above, the Respondent has been discriminating in regard to hire or tenure or terms or conditions of employment of its employment, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described in paragraph 11 above, the Respondent has been failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of unit employees, in violation of Section 8(a)(5) and (1).

4. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by failing and refusing to reinstate Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, and

<sup>1</sup> The General Counsel's motion for default judgment includes the uncontested assertion that the Respondent closed the facility on October 17, 2014.

<sup>2</sup> The complaint alleges that the Respondent violated Sec. 8(a)(3) and (1) by calling the police and requesting that employees Chowdhury and Sandler be removed from the facility. We find that this conduct violates Sec. 8(a)(1) and do not pass on whether it also violates Sec. 8(a)(3). Member Johnson would not find this unalleged independent 8(a)(1) violation, as it is beyond the General Counsel's theory of the case. See generally *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1176 (2004) (Chairman Battista, dissenting).

Nevdoyle Santana upon their unconditional offer to return to work, we shall order the Respondent, in the event that it resumes the same or similar business operations, to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Having found that the Respondent discharged Amina Chowdhury and Greg Sandler in violation of Section 8(a)(3) and (1), we shall also order the Respondent, in the event that it resumes the same or similar business operations, to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Additionally, we shall order the Respondent to compensate Albaret, Nisbett, Apuzen, Capili, Lapid, Mukendi, Nduku, Santana, Chowdhury, and Sandler for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Further, the Respondent shall be required to remove from its files any and all references to the unlawful refusals to reinstate Albaret, Nisbett, Apuzen, Capili, Lapid, Mukendi, Nduku, and Santana upon their unconditional offer to return to work, and to the unlawful discharges of Chowdhury and Sandler, and to notify them in writing that this has been done and that these actions will not be used against them in any way.

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction*

*Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

Further, in view of the fact that the Respondent's facility at 137 West 25th Street, Fifth Floor, New York, New York, is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were employed by the Respondent at any time since June 10, 2014, in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Micropower USA Corp., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instructing employees not to discuss their terms and conditions of employment with union representatives or with one another.

(b) Calling the police to request that employees be removed from the premises.

(c) Discharging, failing, and refusing to reinstate upon an unconditional offer to return to work, or otherwise discriminating against any of its employees because they engage in union or concerted activities and to discourage employees from engaging in these activities.

(d) Failing and refusing to bargain collectively with Professionals at Micropower New York State United Teachers as the exclusive collective-bargaining representative of employees in the bargaining unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) In the event that the Respondent resumes the same or similar business operations, within 14 days thereafter, offer Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler whole for any loss of earnings and other benefits suffered as a result of the

discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Compensate Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler for any adverse tax consequences of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(d) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful refusals to reinstate Albaret, Nisbett, Apuzen, Capili, Lapid, Mukendi, Nduku, and Santana, and the unlawful discharges of Chowdhury and Sandler, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time teachers employed by the Respondent at its facility located at 137 West 25<sup>th</sup> Street, New York, New York, excluding all other employees, including office clerical employees, and guards and supervisors as defined in the Act.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>3</sup> to the Union and to all unit employees who were employed by the Respondent at any time since June 10, 2014. In addition

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 2015

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Mark Gaston Pearce, Chairman

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Harry I. Johnson, III, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT instruct you not to discuss your terms and conditions of employment with union representatives or with one another.

WE WILL NOT call the police to request that you be removed from the premises.

WE WILL NOT discharge, fail, and refuse to reinstate upon an unconditional offer to return to work, or otherwise discriminate against you because you engage in union or concerted activities and to discourage employees from engaging in these activities.

WE WILL NOT fail and refuse to bargain with Professionals at Micropower USA New York State United Teachers as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, in the event that we resume the same or similar business operations, within 14 days thereafter, offer Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL compensate Alex Albaret, Gwendolyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Nevdoyle Santana, Amina Chowdhury, and Greg Sandler for any adverse tax consequences of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful failure and refusal to reinstate Alex Albaret, Gwendo-

lyn Nisbett, Valmike Apuzen, Florentino Capili, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, and Nevdoyle Santana and the unlawful discharges of Amina Chowdhury and Greg Sandler, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any way.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time teachers employed by us at our facility located at 137 West 25th Street, New York, New York, excluding all other employees, including office clerical employees, and guards and supervisors as defined in the Act.

MICROPOWER USA CORP.

The Board's decision can be found at [www.nlrb.gov/cases/02-CA-130858](http://www.nlrb.gov/cases/02-CA-130858) or by suing the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> St., N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

